

**The Occupational Pension Schemes
(Winding up Procedure) Regulations 2006**

Consultation on Draft Regulations

March 2006

DWP Department for
Work and Pensions

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Part One - Foreword

Preface

1. This consultation document seeks views on the draft regulations: The Occupational Pension Schemes (Winding up Procedure) Regulations 2006.

Target audience

2. This consultation is primarily aimed at pension industry professionals. Views from the wider public are also welcome.

DWP Website

3. This document is available on the Department's website at:
<http://www.dwp.gov.uk/consultations/2006/index.asp>

How to respond

4. The consultation exercise will run from 29 March 2006 to 25 April 2006. Any replies received after that date may not be taken into account. Please send your response by **25 April 2006** to:

Declan Montgomery
Department for Work and Pensions
The Adelphi (3rd Floor)
1-11 John Adam Street
London
WC2N 6HT

Tel: 0207 962 8340 or mobile number 07909 880831

Email: Declan.Montgomery@dwp.gsi.gov.uk

5. Because of the highly specialised nature of this consultation, Ministers have decided that it is not appropriate to publish it under the provisions of the Cabinet Office Code of Practice on consultation. It does, however, apply best practice from the Code.

Consultation arrangements

6. A list of those being consulted is attached at Annex A. If you have any suggestions of others who may wish to be involved in this process please contact us.
7. It would be very helpful when responding to indicate whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.
8. According to the requirements of the Freedom of Information Act 2000, all information contained in the response, including personal information may be subject to publication or disclosure. By providing personal information for the purposes of the public consultation exercise, it is understood that a Respondent consents to its disclosure and publication. If this is not the case, the Respondent should limit any personal information which is provided, or remove it completely. If a Respondent requests that the information given in response to the consultation be kept confidential, this will only be possible if it is consistent with Freedom of Information Act obligations and general law on this issue.

The contact point to discuss this is:

Charles Cushing
Freedom of Information
Department for Work and Pensions
2nd Floor
Adelphi
1-11 John Adam Street
London
WC2N 6HT

9. More information about the Freedom of Information Act can be found on the website of the Department for Constitutional Affairs –

<http://www.dca.gov.uk/foi/guidance/exguide/index.htm>.

Feedback

10. A summary of responses will be published following the consultation. The Government will aim to publish this summary within three months of the consultation closing. The summary of responses will be available on the Department's website.

11. If you have any comments, suggestions or complaints about the way in which this consultation exercise has been conducted please contact the

Departmental Consultation Co-ordinator:

Geoff Ashton
Department for Work and Pensions
Consultation Co-ordinator
5th Floor, East 1, Trevelyan Square
LEEDS, LS1 6EB

Telephone: 0113 232 7107
Fax: 0113 232 7221
E-mail: geoff.ashton@dwp.gsi.gov.uk

Regulatory impact assessment

12. A Regulatory Impact Assessment has not been completed for these regulations as any impact is considered to be negligible.

Part Two - The Occupational Pension Schemes (Winding up Procedure) Regulations 2006

Background

1. These regulations are required to implement into UK legislation the provisions contained in Article 16.2(c) of European Directive 2003/41/EC on the Activities and Supervision of Institutions for Occupational Retirement Provision.
2. Article 16.2 permits Member States to allow occupational pension schemes to have insufficient assets to cover technical provisions for a limited period of time. In such circumstances a scheme must have a recovery plan. Most of Article 16.2 has been implemented in the legislation on scheme funding in Part 3 of the Pensions Act 2004 and the Occupational Pensions Schemes (Scheme Funding) Regulations 2005 (SI 2005/3377). The outstanding part is Article 16.2(c) which applies where a scheme that has a recovery plan begins to wind up.
3. Article 16.2(c) provides as follows:
“in the event of termination of a pension scheme during the period referred to above in this paragraph (*ie the period in which a scheme has insufficient assets to cover the technical provisions*) the institution shall inform the competent authorities of the home Member State. The institution shall establish a procedure in order to transfer the assets and the corresponding liabilities to another financial institution or a similar body. This procedure shall be disclosed to the competent authorities of the home Member State and a general outline of the procedure shall be made available to members or, where applicable, to their representatives in accordance with the principle of confidentiality.”

The legislation

4. Where there are existing powers in UK legislation that can be used to change or amend it to implement European Directives then those powers are used. Where there are no suitable existing powers, section 2(2) of the European Communities Act 1972 can be used to introduce new provisions. That section is used in these regulations to introduce a new section 231A into the Pensions Act 2004 which contains requirements for a winding up procedure.

Commentary on the draft regulations

5. Regulation 1 contains the usual citation and provides that the regulations shall come into effect from a specified date.

6. Regulation 2 sets out the scope of the regulations in so far as they apply to an occupational pension scheme that is required to have a recovery plan and that begins to wind up during the recovery period. Recovery period means the period specified in the scheme's recovery plan.
7. Regulation 3 introduces new section 231A into Part 3 of the Pensions Act 2004.
- This section applies to a scheme that starts to wind up during the recovery period specified in the scheme's recovery plan under section 226 of the 2004 Act
 - The trustees of such a scheme must prepare a winding up procedure as soon as practicable
 - If the scheme has an existing winding up procedure the trustees must review and if necessary revise it
 - A winding up procedure must contain the steps to be taken to complete the winding up process
 - These steps must include
 - (a) the action to be taken to establish the scheme's liabilities and recover any assets,
 - (b) an estimate of how long it will take to do this,
 - (c) where the trustees have sufficient information, an indication of the extent to which benefits are likely to be subject to a reduction,
 - (d) the manner in which liabilities will be discharged in accordance with the methods under section 74 of the Pensions act 1995, and
 - (e) an estimate of how much time it will take to discharge liabilities.
 - The trustees must send a copy of the winding up procedure to the Regulator as soon as practicable after it has been prepared
 - A civil penalty applies where trustees have failed to take reasonable steps to comply with these requirements.

Regulation 5(10) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 already requires the trustees of a scheme that starts to wind up to provide the information at (a) (b) and (c) above to members within a month of commencement of wind-up. It is implicit that such schemes are already required to have a winding up procedure early in the process. This new provision is therefore intended to implement Article 16.2(c) in a way that minimises extra administrative costs and burdens arising in any scheme that might start to wind up at a time when it has a recovery plan in place.

8. Regulation 4 amends the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 by requiring an outline of a winding up procedure prepared under section 231A to be made available to members and their representatives on request.

9. Regulation 5 amends the Register of Occupational and Personal Pension Schemes Regulations 2005 by making the date on which winding up commenced information that must be provided to be included in the Register in the case of a scheme to which section 231A applies.

10. Regulation 6 repeals regulation 8(8) of the Occupational Pension Schemes (Scheme Funding) Regulations 2005. This was a temporary measure to implement the requirement in Article 16.2(c) for schemes required to have a recovery plan to notify the regulator in the event of the scheme starting to wind up. But it is limited to 'eligible' schemes and there may be schemes that should be covered by Article 16.2(c) that are not eligible schemes. Regulation 8(8) will no longer be required when regulation 5 of the Occupational Pension Schemes (Winding up Procedure) Regulations 2006 comes into effect.

Part Three – The draft regulations

STATUTORY INSTRUMENTS

2006 No.

PENSIONS

The Occupational Pension Schemes (Winding up Procedure Requirement) Regulations 2006

<i>Made</i> - - - -	[]
<i>Laid before Parliament</i>	[]
<i>Coming into force</i> - -	2006

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾, in relation to matters relating to personal and occupational pensions makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act and sections 113(1), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993⁽³⁾ and sections 60(2)(h), 69(2)(a) and 318(1) of the Pensions Act 2004⁽⁴⁾.

In accordance with section 185(1) of the Pensions Schemes Act 1993⁽⁵⁾ and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted such persons as he considers appropriate before making these Regulations.

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Winding up Procedure Requirement) Regulations 2006 and shall come into force on [2006].

Application

2.—(1) These Regulations apply to an occupational pension scheme in respect of which a recovery plan has been prepared under section 226 of the Pensions Act 2004 (recovery plan) and the scheme begins to wind up during the recovery period.

⁽¹⁾ See S.I. 2004/3328.

⁽²⁾ 1972 c.68.

⁽³⁾ 1993 c.48; section 113(1) was amended by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c.19). Section 181(1) is cited because of the meaning there given to “prescribed” and “regulations”.

⁽⁴⁾ 2004 c.35; section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

⁽⁵⁾ Section 185(1) is amended by paragraph 80(a) of Schedule 5 to the Pensions Act 1995 (c.26).

(2) In this regulation, the “recovery period” means the period specified in the scheme’s recovery plan in accordance with section 226(2)(b) of that Act.

Amendment of the Pensions Act 2004 [section 2(2) of the European Communities Act 1972]

3.—(1) After section 231 of the Pensions Act 2004 (powers of the Regulator) insert—

“Requirements for winding up procedure

231A.—(1) Where an occupational pension scheme in respect of which a recovery plan has been prepared under section 226 begins to wind up during the recovery period, the trustees or managers of the scheme must as soon as reasonably practicable—

- (a) prepare a winding up procedure, if there is no existing winding up procedure in force;
- (b) if there is an existing winding up procedure in force, review and if necessary revise it.

(2) A winding up procedure must—

- (a) set out the steps to be taken to discharge the liabilities to or in respect of the members of the scheme, in respect of pensions or other benefits, in accordance with section 74 of the Pensions Act 1995 (discharge of liabilities by insurance etc.), and
- (b) be appropriate having regard to the nature and circumstances of the scheme.

(3) A winding up procedure must—

- (a) set out the action to be taken to establish the liabilities to or in respect of the members of the scheme, in respect of pensions or other benefits, and to recover any assets of the scheme;
- (b) give an estimate of the amount of time it will take to establish those liabilities and to recover any such assets;
- (c) give an indication of which of the accrued rights or benefits (if any), to which a person is entitled under the scheme, are likely to be affected by a reduction in actuarial value;
- (d) specify the manner in which the liabilities to or in respect of the members of the scheme, in respect of pensions or other benefits, will be discharged in accordance with section 74(3) of the Pensions Act 1995;
- (e) give an estimate of the amount of time it will take to discharge those liabilities.

(4) The requirement imposed by subsection (3)(c) applies only to the extent that the trustees or managers have sufficient information to give such an indication.

(5) The trustees or managers must send a copy of any winding up procedure to the Regulator as soon as reasonably practicable after it has been prepared or, as the case may be, revised.

(6) Where any requirement of this section is not complied with, section 10 of the Pensions Act 1995 (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

(7) In this section “recovery period”, in relation to an occupational pension scheme, means the period specified in the scheme’s recovery plan in accordance with section 226(2)(b).”.

Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 [sections 113 and 182(2) and (3) of the Pension Schemes Act 1993]

4.—(1) Amend the Occupational Pension Schemes (Disclosure of Information) Regulations 1996⁽⁶⁾ as follows.

(2) In regulation 7(1) (availability of other documents), after sub-paragraph (d) insert—

“(e) an outline of the winding up procedure prepared or revised under section 231A of the 2004 Act.”.

⁽⁶⁾ S.I. 1996/1655; the relevant amending instrument is S.I. 2005/3377.

Amendment of the Register of Occupational and Personal Pension Schemes Regulations 2005
[sections 60(2)(h) and 318(1) of the Pensions Act 2004]

5.—(1) Amend the Register of Occupational and Personal Pension Schemes Regulations 2005⁽⁷⁾ as follows.

(2) In regulation 3 (registrable information)—

(a) after paragraph (1)(f) add—

“(g) in the case where an occupational pension scheme in respect of which a recovery plan has been prepared under section 226 of the Act begins to wind up during the recovery period, the date on which the winding up commenced;”.

(b) after paragraph (5) add—

“(6) In paragraph (1)(g), “recovery period” means the period specified in the scheme’s recovery plan in accordance with section 226(2)(b) of the Act.”.

Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 [sections 69(2)(a) and 318(1) of the Pensions Act 2004]

6.—(1) Amend the Occupational Pension Schemes (Scheme Funding) Regulations 2005⁽⁸⁾ as follows.

(2) In regulation 8 (recovery plan), omit paragraph (8).

(3) In regulation 17 (exemptions – general)—

(a) in paragraph (1)(l), for “subject to regulation 18” substitute “subject to paragraph (1A) and regulation 18”;

(b) after paragraph (1) insert—

(1A) Section 231A of the 2004 Act applies to a scheme in respect of which a recovery plan has been prepared under section 226 of the 2004 Act and the scheme begins to wind up during the recovery period.

(4) In paragraph (2), in the appropriate alphabetical place insert—

““recovery period” means the period specified in the scheme’s recovery plan in accordance with section 226(2)(b) of the 2004 Act.”.

Signed by authority of the Secretary of State for Work and Pensions.

[2006]

[Name]
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972 (c.68) and implement paragraph (c) of Article 16.2 of the European Union Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (OJ No. L 235, 23.9.03, p.10) (“the Directive”).

Regulation 2 specifies the schemes to which the Regulations apply.

Regulation 3 inserts new section 231A into the Pensions Act 2004 (c.35) (“the 2004 Act”). Subsection (1) of the new section 231A provides that the trustees or managers of a scheme must prepare a winding up procedure (or, if a winding up procedure is already in existence, review and if necessary revise it),

⁽⁷⁾ S.I. 2005/597.

⁽⁸⁾ S.I. 2005/3377.

as soon as reasonably practicable after a scheme begins to wind up during the recovery period. The “recovery period” is defined as the period specified in the scheme’s recovery plan in accordance with section 226(2)(b) of the 2004 Act (new subsection (7)). The winding up procedure must set out the action to be taken to discharge the liabilities of the scheme in accordance with section 74 of the Pensions Act 1995 (c.26) and must include specified information (new subsections (2) and (3)). The trustees or managers must send a copy of the winding up procedure to the Pensions Regulator as soon as reasonably practicable after it has been prepared or revised (new subsection (5)). New subsection (6) provides that penalties under section 10 of the Pensions Act 1995 apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance with the requirements of that section.

Regulation 4 amends the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (S.I. 1996/1655) to require the trustees or managers of a scheme to disclose an outline of the winding up procedure to the members of the scheme and their representatives.

Regulation 5 amends the Register of Occupational and Personal Pension Schemes Regulations 2005 (S.I. 2005/597) to prescribe that the date the winding up of a scheme commenced, where the scheme begins to wind up during the recovery period, is registrable information for the purposes of section 60(2)(h) of the 2004 Act.

Regulation 6 amends the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377) and removes the disclosure provision in regulation 8 as a consequence of regulation 5 of these Regulations. It also amends regulation 17 enabling section 231A of the 2004 Act to apply to a scheme in respect of which a recovery plan has been prepared under section 226 of that Act and the scheme begins to wind up during the recovery period.

These Regulations have only a negligible impact on business. Publication of a full Regulatory Impact Assessment is not necessary for such legislation. Copies of a transposition note concerning the implementation of the Directive by these Regulations may be obtained from Private Pensions, Department for Work and Pensions, 3rd floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

Annex A

List of those consulted:

Association of British Insurers
Association of Consulting Actuaries
Association of Corporate Trustees
Association of Independent Financial Advisers
Association of Pension Lawyers
British Chambers of Commerce
Confederation of British Industry
Consumers' Association
Department of Social Development (Northern Ireland)
Engineering Employers' Federation
Federation of Small Businesses
Financial Ombudsman Service
Financial Services Authority
Government Actuary's Dept
HM Revenue & Customs
Institute and Faculty of Actuaries
Institute of Chartered Accountants
Institute of Chartered Accountants in Scotland
Institute of Directors
Investment Management Association
Law Society
Law Society of Scotland
National Association of Pension Funds
National Consumers Council
National Pensioners Convention
Pensions Management Institute
Pensions Ombudsman
Scotland Office
Society of Pension Consultants
The Construction Company
The Pensions Advisory Service
The Pensions Regulator
Trades Union Congress